***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

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+ 25147 OF 2005, 25771 OF 2005 AND 25772 OF 2005

% 16-02-2006

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Between:

W.P.No. 25147 OF 2005

#P.V.V. Prasad and Others …Petitioners

A N D

$The Government of Andhra Pradesh,

Rep. By its Secretary, Municipal

Administration & Urban Development (Ele. II)

Department, Secretariat, Hyderabad and Others

…. Respondents

W.P.No. 25771 OF 2005

-

#Kaki Savitramma …Petitioner

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$The Government of Andhra Pradesh,

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W.P.No. 25772 OF 2005

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#B.Sanyasi Rao …Petitioner

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…Respondents

Counsel for the Petitioners: S.RAMACHANDRA RAO

& SMT. D.PRASANNA KUMARI

Counsel for the Respondents : G.P. FOR MUNICIPAL

ADMINISTRATION & G.P. FOR

PANCHAYATH RAJ.

> Head Note :

? CITATIONS :

AIR 1977 SC 2328

[2] AIR 1982 SC 149

3 AIR 1991 Supreme Court 101

[4] 1998 (6) ALD 512

[5] (1989)3 Supreme Court Cases 396

[6] AIR 1982 ANDHRA PRADESH 123

[7] (2002) 10 Supreme Court Cases 565

[8] (1989) 3 SCC 396

[9] (1987) 2 SCC 510

[10] AIR 1982 AP 123

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C O M M O N O R D E R :

1. These three writ petitions are filed by the petitioners who are Sarpanchs of Gram Panchayats namely Adivivaram Gram Panchayat, Pendurthi Gram Panchayat, Purushothapuram Gram Panchayat, Pulaganipalem Gram Panchayat, Lakshmipuram Gram Panchayath, Porlupalem Gram Panchayat, Narava Gram Panchayat, Sathiwanipalem Gram Panchayat, Gudlavanipalem Gram Panchayat, Bakkannapalem Gram Panchayat, Yellapuvanipalem Gram Panchayat, Paradesipalem Gram Panchayat, Kommadhi Gram Panchayat, Madhuravada GramPanchayat, China Mushidivada Gram Panchayat, Palavalasa Gram Panchayat

and Devada Gram Panchayat assailing the action of the government in merging their areas in Visakhapatnam Municipal Corporation for formation of Greater Visakhapatnam Municipal Corporation.

2. The case of the petitioners as disclosed in the affidavits filed in support of the writ petitions, in brief, is as follows:-

The petitioners in these writ petitions are directly elected as Sarpanches of Pendurthi Gram Panchayat, Purushothapuram Gram Panchayat, Pulaganipalem Gram Panchayat, Lakshmipuram Gram Panchayat, Porlupalem Gram Panchayat, Narava Gram Panchayat, Sathiwanipalem Gram Panchayat, Gudlavanipalem Gram Panchayat, Bakkannapalem Gram Panchayat, Yellapuvanipalem Gram Panchayat, Paradesipalem Gram Panchayat, Kommadhi Gram Panchayat, Madhuravada Gram Panchayat, China Mushidivada Gram Panchayat, Palavalasa Gram Panchayat and Devada Gram Panchayat respectively in the elections held in the month of August, 2001 and they assumed the office. 32 Gram Panchayats are sought to be merged with Visakhapatnam Municipal Corporation (for short VMC) for formation of Greater Visakhapatnam Municipal Corporation (for short GVMC). The tenure of the Sarpanches of the above Gram Panchayats is five years and they are entitled to hold office by virtue of the Constitutional command contained in Article 243-E till 15-8-2006. As far as Gajuwaka Municipality is concerned, the term of the elected Municipal Councilors was already over by March, 2005 and it is now headed by a Special Officer. No election to Gajuwaka Municipality has been conducted even after the expiry of the term of the elected body in March, 2005. The Constitution mandates that elections should be held before the term of the elected bodies is expired. The term of the elected bodies of the VMC had also expired by March, 2005 and it is under the control of the Special Officer. Neither Gajuwaka Municipality nor the Visakapatnam Municipal Corporation is no longer considered to represent the democratic view of the people, since the peoples representatives term of five years for which they are elected had expired by March, 2005. The proposal of the government for inclusion of 32 Gram Panchayats has been opposed by 23 Gram Panchayats, which have unanimously resolved opposing merger of their areas in VMC for formation of GVMC and whereas 9 Gram Panchayats, dominated by the ruling party, have favoured the move of the Government. Article 243-E assured the period of five years unless so sooner dissolved under any law for the time being in

force. The only power to dissolve the Gram Panchayat is contained in Section 250 of the A.P. Panchayat Raj Act, 1994 and the power conferred on the Government to dissolve such Panchayat is only for misconduct i.e. not competent to perform its functions or has failed to exercise its powers and perform its functions or has exceeded or abused any of the powers conferred upon it by or under this Act, or any other law for the time being in force. There is no other situation in the A.P. Gram Panchayat Act, 1994, where five years term assured in the Constitution by Article 243-E can be reduced. There is no provision for dissolution of Gram Panchayat for the purpose of merging its area with a Municipality or a Corporation. There is no provision in A.P. Panchayat Raj Act, 1994 enabling the Government to dissolve the Panchayats for merging its area with higher tier like Municipality or Corporation. Section 3(1) of the Visakhapatnam Municipal Corporation Act, 1979 empowers the Government only to alter the limits of the city by including other areas after consultation with the Corporation. The said provision has nothing to do with the dissolution of the elected Panchayats before expiry of their term. Article 243-D defines “Panchayat” as an institution of self Government constituted under Article 243-B. Sub-Section 1 of Section 3 of Visakhapatnam Municipal Corporation Act, 1979 empowers only to alter the limits of the city but it does not enable the dissolution or abolition of an elected Panchayat for the purpose of including it in an enlarged body. There is no provision for the dissolution of the Panchayat for the purpose of inclusion in either Municipality or a Municipal Corporation. The provisions relied upon and used by the Government are traceable and confined to the expansion or contraction and enlargement of the territorial limits only. The attempt of the Government abolishing 32 Gram Panchayats in the name of merging their areas with a larger body called Greater Visakhapatnam Municipal Corporation, without there being a proper dissolution, is totally unsustainable, unconstitutional, inoperative and is void ab-initio. After issuing the Government Order impugned in these writ petitions, the officials of Visakhapatnam Municipal Corporation took away all the records by force despite protest from the writ petitioners and thus Special Officers are appointed to take charge of the records and to administer the villages for which the petitioners were duly elected.

3. Government of Andhra Pradesh represented by its Secretary, Municipal Administration and Urban Development (Ele.II) Department, Secretariat, Hyderabad-

1st respondent, the District Collector, Visakhapatnam-3rd respondent and District Panchayat Officer, Visakhapatnam-4th respondent in W.P.No. 25147 of 2005 resisted the writ petitions by filing counter affidavit. One Sista Viswanath Rao has sworn to the counter affidavit. It is stated in the counter affidavit that Visakapatnam is the second largest urban agglomeration both in terms of population and area in the State of Andhra Pradesh with a population of 13.29 lakhs as per 2001 census and an area of 111 sq. km. The large-scale expansion of Visakhapatnam and its suburbs began since 1970's with the setting up of Visakahapatnam Steel Plant at Gajuwaka and also in view of the townships development undertaken by Vishakhapatnam Urban Development Authority. The Government keeping in view the growth of Visakhapatnam and its population and various other factors proposed to expand the area of Visakapatnam Municipal Corporation limits by merging Gajuwaka Municipality and 32 surrounding Gram Panchayats with Visakhapatnam Municipal Corporation with a view to facilitate and improve high standard of civic services, and better civic administration mechanism ensuring better planning and development of the city with more equitable devolution of finances and utilization of resources, ensuring uniform enforcement and to make the city internationally competitive with world class infrastructure and services. The Government proposed to merge 32 Gram Panchayats in VMC. The Gram Panchayats proposed to be merged with the Municipal Corporation of Visakhapatnam are as follows:

1. Madhurawada
2. Pardesipalem
3. Kommadi
4. Bakkanapalem
5. P.M. Palem
6. Yendada
7. Gudlavanipalem
8. Adivivaram
9. Yellapuvanipalem

10. Vepagunta
11. Purushottapuram
12. Chinna Mushidiwada
13. Pulagalipalem
14. Pendhurthi
15. Lakshmipuram
16. Porlupalem
17. Narava
18. Sathivanipalem
19. Nangi Narapadu
20. Vedulla Narava
21. Gangavaram
22. E.marripalem
23. Mantripalem
24. Lankelapalem
25. Desapatrunipalem
26. Duvvada
27. Aganampudi
28. K.T.Naidupalem
29. Devada
30. palavalasam
31. Chinnipalem

32. Appikonda

4. It is further stated in the counter affidavit that a notice was issued vide G.O.Ms.No. 694, dated 18-7-2005 by exercising powers conferred under Section 3(1) of Visakahapatnam Municipal Corporation Act, 1979 requesting the Commissioner, Visakahapatnam Municipal Corporation to place the matter before the Council and obtain the views/objections/ suggestions, if any, on the proposal and communicate the same to the Government within a period of 15 days from the date of receipt of the said G.O. Similarly the Government vide G.O.Ms. No. 695, dated 18-7-2005 issued a draft notification declaring the intention of the Government to elicit suggestions from the public for inclusion of areas contiguous to Visakhapatnam Municipal Corporation in the limits of Visakhapatnam Municipal Corporation. The Government vide Memo No. 11305/Pts. IV/ A1/2005-1, dated 22-7-2005 requested the Collector, Visakahpatnam District to obtain views of the Gram Panchayats proposed to be merged with the Visakahapatnam Municipal Corporation. Out of 32 Gram Panchayats, 23 Gram Panchayats have opposed inclusion of their areas in the limits of Municipal Corporation of Visakhapatnam. Therefore, the Government vide Memo No. 11305/Pts. IV/A1/2005-2, dated 31-8-2005 have issued a show cause notice to 23 Gram Panchayats calling upon them to explain as to why the resolutions passed by them opposing their inclusion into the limits of Visakahpatnam Corporation should not be cancelled. The Government after careful examination of the explanations of 23 Gram Panchayats found that most of the objections are mere apprehensions and without any basis. Therefore, the Government in exercise of the powers conferred under Section 246(1) of the Andhra Pradesh Gram Panchayat Act, 1994 has cancelled the resolutions passed by them. Accordingly, a notification has been issued vide G.O.Ms. No. 378 P.R. & R.D. (Pts. IV) Department, dated 21-11-2005 canceling the said resolutions. In exercise of power conferred under clause (f) of sub-section (2) of Section 3 of Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994), the Government have issued orders vide G.O.Ms. No.379 P.R. & R.D. (Pts.IV) Department, dated 21-11-2005 canceling the notifications in which the 32 Gram Panchayats were declared as villages and Gram Panchayats with immediate effect so as to include their areas in the Visakhapatnam Municipal Corporation. The Government issued G.O.Ms.No.937 M.A. & U.D. Department, dated 21-11-2005 by abolishing the Gajuwaka Municipality in exercise of the powers conferred under

sub-section 1 of Section 3(a) of A.P. Municipalities Act, 1965 for merging the same into Greater Visakahapatnam Municipal Corporation. G.O.Ms.No. 938 M.A. & U.D. Department, dated 21-11-2005 came to be issued merging Gajuwaka Municipality and 32 Gram Panchayats into the limits of Visakahaptnam Municipal Corporation. Section 3 of the Municipal Corporation Act, 1979 empowers the Government to alter the limits of the city by including several areas after consultation with the Visakhapatnam Municipal Corporation. Accordingly, the Government has issued notice through G.O.Ms. Nos. 694 and 695 M.A. dated 18-7-2005 declaring its intention to merge the Gajuwaka Municipality and surrounding 32 Gram Panchayats in the limits of Visakahapatnam Municipal Corporation and calling for objections from the Council of Visakhapatnam Municipal Corporation and from general public. The proposed action of the State Government for expansion of Visakhapatnam Municipal Corporation limits is well within the scheme provided under 73rd and 74th Constitutional Amendments. Under Section 9(2) of the Visakhapatnam Municipal Corporation Act, 1979 and Section 62-A of A.P. Municipalities Act, 1965, the Special Officers are vested with the power of the Council and therefore, their decision cannot be said as an empty formality. Passing of resolution opposing creation of Greater Visakhapatnam Municipal Corporation in any way would not prevent the State Government from taking appropriate decision in the larger interest of Visakhapatnam city and its neighbouring Gram Panchayats/ Municipalities. Section 3 of the Andhra Pradesh Panchayat Raj Act, 1994 empowers the Government to declare any revenue village or hamlet thereof or any part of a Mandal to be a village by issuing a notification and so also under Section 3(2) (f) of A.P.Panchayat Raj Act, 1994 the Government is empowered to cancel a notification issued under sub-section (1) of Section 3. The State Government has issued a Notification by exercising the power available under Section 3(2) (f) canceling the notifications under which 32 Gram Panchayats have been constituted earlier. The said power has nothing to do with the term of Panchayats under Article 243-E of the Constitution of India. Since Gram Panchayats have been de-notified, the petitioners cannot take shelter under Article 243-E. The petitioners cannot take shelter under Section 250 of A.P. Panchayat Raj Act, 1994 also since the said provision is no longer available when once the Gram Panchayat itself ceases to exist pursuant to de-notification issued by the Government. Since the resolutions passed by the Gram Panchayats to which the petitioners are concerned came to be cancelled by the Government in accordance with law, they cannot question the action of the Government. Since the Gram

Panchayats for which the petitioners are concerned ceased to exist, the question of their holding the position as Sarpanches is misconceived.

5. Heard Sri S.Ramchander Rao, learned Senior Counsel and Smt.D.Prasanna Kumari, learned counsel appearing for petitioners and learned Special Government Pleader appearing for the respondents.

6. The facts of the case be summarized before dwelling deep on the respective contentions of the parties.

The District Collector, Vishakhapatnam submitted proposals to the Government for constitution of Visakhapatnam Municipal Corporation as Greater Visakhapatnam Municipal Corporation by merging Gajuwaka Municipality and 32 surrounding Panchayats in the VMC. The Government of Andhra Pradesh issued draft notification duly declaring its intention vide G.O.Ms.No.695 Municipal Administration & Urban Development (ELE-II) Department, dated 18-7-2005. The notification appended to G.O.Ms.No.695 Municipal Administration & Urban Development (ELE-II) Department dated 18-7-2005 reads as follows:

> " Visakhapatnam is the second largest city in the State of Andhra Pradesh, a sprawling industrial city and one of the fast emerging metropolises. The largescale expansion of Visakhapatnam and its suburbs began since 1970 with the setting up of the Visakhapatnam Steel Plant at Gajuwaka and the townships development undertaken by Visakhapatnam Urban Development Authority. The trend of population expansion and growth is more pronounced along the National Highway-5, viz., towards Gajuwaka on the west and Madhurwada on the East. With the establishment of various industries, Gangavaram Port and SEZ towards the west of Visakhapatnam the urban spread of Visakhapatnam is increasing in a linear pattern.
>
> The rapid pace of development and growth in and around Visakhapatnam Municipal Corporation and Gajuwaka Municipality are posing severe strain on the physical infrastructure facilities and services and creating problem of effective management and administration in view of multiplicity of local bodies.
>
> Hence, considering all the above, and with a view (i) to provide better civic services; (ii) better administrative mechanism; (iii) ensure better

planning and focused development in and around Visakhapatnam; (iv) more equitable devolution of finances and utilization of resources; (v) ensure uniform enforcement; and (vi) to make the Visakhapatnam and its suburbs internationally competitive with world class infrastructure and services, the Government have provisionally decided to expand the limits of Visakhapatnam Municipal Corporation by merging Gajuwaka Municipality and surrounding 32 Gram Panchayats located around Visakhapatnam Municipal Corporation.

Hence, it is proposed to include the Gajuwaka Municipality and 32 Gram Panchayats located around the Visakhapatnam in the limits of Visakhapatnam Municipal Corporation. The details are as follows:

Municipality

Gajuwaka

Gram Panchayats

1. Madhurawada
2. Pardesipalem
3. Kommadi
4. Bakkanapalem
5. P.M. Palem
6. Yendada
7. Gudlavanipalem
8. Adivivaram
9. Yellapuvanipalem
10. Vepagunta
11. Purushottapuram
12. Chinna Mushidiwada
13. Pulagalipalem
14. Pendhurthi
15. Lakshmipuram
16. Porlupalem

17. Narava

18. Sathivanipalem

19. Nangi Narapadu

20. Vedulla Narava

21. Gangavaram

22. E.marripalem

23. Mantripalem

24. Lankelapalem

25. Desapatrunipalem

26. Duvvada

27. Aganampudi

28. K.T.Naidupalem

29. Devada

30. palavalasam

31. Chinnipalem

32. Appikonda

Notice is hereby given as required under the second proviso to sub-section (1) of section 3 of the Visakhapatnam Municipal Corporation Act 1979 that the above proposal will be taken with consideration by the Government after the expiry of the period of thirty days from the date of publication of this notification in the Andhra Pradesh Gazette and any objections or suggestions which may be received from any person with respect thereto before the expiry of the aforesaid period will be considered by the Government of Andhra Pradesh. Objections or suggestions should be addressed to the Secretary to Government, Municipal Administration and Urban Development Department, A.P., Secretariat, Hyderabad."

The Government issued memo No.11305/Pts.IV/A1/ 2005-1, dated 22.7.2005 requesting the District Collector, Visakhapatnam to obtain and furnish views of 32 Gram Panchayats and their merger with VMC for constitution of GVMC in the form of resolutions to the Government. The District Collector in turn issued urgent memo to 32 Gram Panchayats to convene urgent meeting to discuss the views of the Gram

Panchayats and submit their reports in the form of resolutions. Of the 32 Gram Panchayats, 23 Gram Panchayats opposed for inclusion of their areas in VMC. The Government after considering the resolutions of the Gram Panchayats issued show cause notices under Memo.No.113-5/Pts.IV/A1/2005-2, dated 31.8.2005 calling upon as to why the resolutions opposing their merger with VMC for constitution of GVMC cannot be cancelled. The relevant portion of the memo reads as follows:

" In the reference first cited, the District Collector, Visakhapatnam has sent a proposal for inclusion of 32 Gram Panchayats into the limits of Visakhapatnam Municipalm Corporation for constituting VMC as greater VMC.

In the reference 2nd cited, the District Collector, Visakhapatnam has forwarded the resolutions of the 32 Gram Panchayats. It is sent hat out of 32 Gram Panchayats, 23 Gram Panchayats passed resolutions opposing their merger into the limits of Visakhapatnam Muncipal Corporation for constituting VMC as greater VMC.

Government after careful examination of the proposal of the District Collector, Visakhapatnam have provisionally decided to merge the 32 surrounding Gram Panchayats into the limits of Visakhapatnam Municipal Corporation for constituting VMC as greater VMC.

Government therefore direct the following 23 Gram panchyayats of Visakhapatnam District which have passed resolutions in the references 3rd to 25th cited opposing their merger with the limits of Visakhapatnam Municipal Corporation for constitution of Greater Visakhapatnam Municipal Corporation to show cause as to why the resolutions passed by them cannot be cancelled, within (10) days to Government. If no reply is received within the stipulated time, it will be presumed that the Gram Panchayats have no objections to make and action will be taken as proposed in para (3) above."

All the 23 Gram Panchayats submitted their explanations in the form of resolutions opposing merger of their areas with VMC for constituting GVMC. The resolutions passed by 23 Gram Panchayats came to be forwarded to the Government through the District Collector, Visakhapatnam. The Government in exercise of powers conferred u/s 246 (1) of A.P.Gram Panchayat Act, 1994 cancelled the resolutions passed by 23 Gram Panchayats of Vishakhapatnam under G.O.Ms.No.378, dated 21.11.2005. The relevant portion of the Government Order reads as follows:

" 1. In the reference first read above, the District Collector, Visakhapatnam has sent proposal for inclusion the area covered under thirty two (32) surrounding Gram Panchayats of Visakhapatnam District into the limits of Municipal Corporation of Visakhapatnam.

2. The District Collector (PW), Visakhapatnam through his letter second read above, has forwarded the resolutions of 32 Gram Panchayats of Visakhapatnam District. It is seen that out of the 32 Gram Panchayats, 23 Gram Panchayats have opposed their inclusion into the limits of Municipal Corporation of Visakhapatnam.

3. In the reference third read above, Government have issued show cause notices to the following 23 Gram Panchayats requesting them to explain as to why the resolutions passed by them opposing their inclusion into the limits of Visakhapatnam Corporation should not be cancelled : i.e. 1) Narava Gr.Pt. 2) lakshmipuram Gr.Pt. 3) Adivivaram Gr.Pt. 4) Pendurthi Gr.Pt. 5) Gudlavanipalem Gr.Pt. 6) Yellapuvanpalem Gr.Pt. 7) Porupalem Gr.Pt. 8) Sathivanipalem Gr.Pt. 9) Nanginarapadu Gr.Pt. 10) Edurulanarva Gr.Pt. 11) Gangavaram Gr.Pt. 12) E.marripalem, Gr.Pt., 13) Mantripalem Gr.Pt. 14) Lankalapalem Gr.Pt. 15) Desapatrunipalem Gr.Pt. 16) Duvvada Gr.Pt. 17) Agnampudi Gr.Pt. 19) Chinapalem Gr.Pt. 19) Kadithinaidupalem Gr.Pt. 20) Palavalasa Gr.pt. 21) Vepagunta Gr.Pt. 22) Devada Gr.pt. 23) Appikonda Gr.Pt.

4. In the reference fourth read above, the District Collector (PW), Visakhapatnam has sent the resolutions passed by the 23 Gram Panchayats in reply to the show cause notices issued to them in which all the 23 Gram Panchayats have opposed their inclusion into the limits of Municipal Corporation of Visakhapatnam.

5. Government have carefully examined the explanations of the 23 Gram Panchayats noted in para 3 above given in the form of resolutions and found that most of the objections are mere apprehensions without any basis, that in respect of certain objections, no reasons/justification are given, and that there is no substance in any of the objections put forth by the said Gram Panchayats. Since the decision to include the above Gram Panchayats into the limits of Municipal Corporation of Visakhapatnam in the larger interests of the people of the area keeping in view of its over all development and the urgent need to improve provision of services to the public, the Government have felt that the objections raised by the said Gram Panchayats have no force and do not deserve consideration.

6. Therefore, the Government in exercise of the powers conferred under section 246(1) of the Andhra Pradesh Panchayat Raj Act, 1994 have decided to cancel the following resolutions passed by the following 23 Gram Panchayats of Visakhapatnam District."

The Government issued G.O.Ms.No.379, dated 21.11.2005 canceling all the 32 Gram Panchayats under clause (f) of sub-section (2) of Sec.3 of A.P.Panchayat Raj Act, 1994 (Act 13 of 1994). Paragraphs 4, 5 and 6 of the said notification read as follows:

> " 4. In the reference fourth read above, the District Collector (PW), Visakhapatnam has sent the aforesaid resolutions passed by the (Twenty three) 23 Gram Panchayats in reply to the show cause notices issued to them in which all the 23 Gram Panchayats opposed their inclusion into the limits of Municipal Corporation of Visakhapatnam.
>
> 5. Government, after carefully examining the objections raised by the 23 Gram Panchayats enlisted in para 3 above have cancelled the resolutions passed by them. Accordingly, a notification has been issued in the reference 5th read above canceling the said resolutions.
>
> 6. In furtherance of the orders issued in the reference 5th read above, Government hereby decide to cancel the notifications in which the thirty two (32) surrounding Gram Panchayats of Vishakhapatnam city were declared as villages and Gram Panchayats and include them into the limits of VMC."

Thereafter, the Government issued G.O.Ms.No.938, dated 21.11.2005 constituting VMC as GVMC by merging 32 Gram Panchayats and Gajuwaka Municipality.

7. W.P.No.25147 of 2005 is filed by 15 Sarpanches of Gram Panchayats challenging G.O.Ms.No.938, dated 21.11.2005. W.P.Nos.25771 and 25772 of 2005 have been filed by the Sarpanchs of Palavalasa and Devada Gram Panchayats challenging G.O.Ms.No.378, dated 21.11.2005. Challenge in these three writ petitions is with regard to the cancellation of resolutions opposing merger of their areas in VMC for constitution of GVMC. Therefore, all the three writ petitions were heard together and they are being disposed of by this common order.

8. Part-IX and IX-A added to the Constitution by 73rd and 74th Constitutional Amendments Act and the Constitutional Amendments Act is popularly known as the Panchayat Raj and Nagarpalika Constitution Amendment Acts in Nagar

Panchayats. These amendments provide constitutional safeguards at the gross root level by inserting in the Constitution two new parts relating to Panchayat and Urban local bodies. 73rd Amendment Act envisages Gram Sabha as foundation of the Panchayat Raj system to perform functions and powers entrusted to it by the State Legislatures. The amendment provides to form three tier Panchayat Raj system at the village, intermediate and District levels. Article 243-A provides that the Grama Sabha may exercise such powers and performs such functions at the village level as the legislature of a State may by law provides. The 73rd amendment thus envisages Grama Sabha as foundation of the Panchayat Raj system. Grama Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level. Article 243-B visualizes three-tier Panchayat Raj system, which provides that in every State there shall be constituted Panchayats at the village, intermediate and District levels. Article 243-C provides that subject to the provisions of Part IX the legislators of State may by law make provisions with respect to composition of Panchayats. Under Article 243-E, every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

9. Learned Senior counsel appearing for the petitioners by making copious references to Article 243-E submits that abolishing the institution of Gram Panchayat of the respective villages for which the petitioners have been duly elected is contrary to the amendments known as Panchayat Raj Nagarpalik Amendments Act. He also refers to the definition of “Panchayat” as defined in Article 243-D which means an institution (by whatever name called) of self government constituted under Article 243-B for the rural areas. Panchayat area as defined in Article 243-C means territorial area of a Panchayat. Since copious references have been made to Article 243-E, I deem it appropriate to extract the same and it is thus.

> “243-E. Duration of Panchayats, etc: 1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.
>
> (2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is

functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Panchayat shall be completed.

a. before the expiry of its duration specified in clause (1)

b. before the expiration of a period of six months from the date of its dissolution;

Provided that where the remainder of the period for which the dissolved Panchayat would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Panchayat.

(4) A Panchayat constituted upon the dissolution of a Panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Panchayat would have continued under clause (1) had it not been so dissolved."

10. The function of the Government in establishing Corporation under the Act is neither executive nor administrative. It is a legislative process. No judicial duty is laid on the Government in discharge of statutory duties. The only question to be examined is whether statutory provisions have been complied with. If they are complied with, then the Court could say no more. In the present case the Government did publish the proposal by draft notification and also considered the representations received. It was only thereafter a decision was taken to abolish the Gram Panchayats and include their areas in Greater Visakhapatnam Municipal Corporation. The Court cannot sit in judgment over such decisions. It cannot laid down norms for the exercise of that power. It cannot substitute even its jester will for theirs.

11. The Government in exercise of powers under Section 3 is not subject to the rules of natural justice any more than the legislature itself. The rules of natural justice are not applicable to the legislative action plenary or subordinate. The procedural requirement of hearing is not implied in exercise of power unless the hearing was expressly prescribed.

12. The power to constitute Greater Visakhapatnam Municipal Corporation under the provisions of the Visakhapatnam Municipal Corporation Act is legislative in character. It is an extension of the legislative process for which rule of natural justice has no application.

13. The Principles of self Government are not violated in any manner, if the Gram Panchayat is de-notified and if that local area is included within the adjoining municipality or Corporation. The obligation of the State to organize Village Panchayats and to endow them with such power or authority as may be necessary to enable them to function as unit of self Government is there only when the local area continues to be a village. When the notification constituting the Gram Panchayat itself is cancelled for valid purpose so as to include it within adjoining Municipality, or corporation, any of the provisions of the Constitution come in the way of the Government in including the local area within the limits of the adjoining municipalities.

14. Learned Senior Counsel appearing for the petitioners submits that the consent or consultation with the Corporation i.e. Visakhapatnam Municipal Corporation for inclusion of Gajuwaka Municipality and neighbouring 32 Gram Panchayats cannot be said to be an effective consultation since both the Visakhapatnam Municipal Corporation and Gajuwaka Municipality are being headed by the Special Officers i.e. Collector as Special Officer of Visakhapatnam Municipal Corporation and Joint Collector as the Special Officer of Gajuwaka Municipality. In a way, he submits that the consent of the Collector and the Joint Collector for expansion of the area of Visakhapatnam Municipal Corporation cannot be treated as consultation as contemplated under Section 3 of the Visakhapatnam Municipal Corporation Act, 1979. A further submission has been made that the tenure of every Panchayat for a period of five years has been assured under Article 243-E of the Constitution of India and the duly elected Panchayats can be dissolved only under Section 250 of the A.P. Gram Panchayat Act, 1994 and there is no other provision under the Act to dissolve the same. He also refers section 62 of the A.P. Municipality Act and Sections 679(D) of the Visakhapatnam Municipal Corporation Act, which deal with the Government powers to dissolve the Municipality and Corporation respectively.

What he means to say is the dissolution of the Gram Panchayats can be only on failure of the Gram Panchayats to comply with such directions or failure to exercise its powers or perform its functions or exceeded or abuse any of the powers conferred upon it or any other law for the time being in force.

15. During the course of argument, learned senior counsel questions the validity of consent of the Special Officers for expansion of the area of the Visakhapatnam Municipal Corporation by way of inclusion of the area covered by Gajuwaka Municipality. He also refers the meaning of the words “consult” and “consultation” as given by the Supreme Court in UNION OF INDIA v. SANKALACHAND HEMATAL SETH and S.P.GUPTA V. PRESIDENT OF INDIA. In support of his submissions, reliance has been placed on the decision of Supreme Court in DELHI TRANSPORT CORPORATION VS. D.T.C. MAZDOOR CONGRESS laying much emphasis on paragraphs 199,244,251,260,262,264, 267 therein.

16. In my considered view, the validity or otherwise of the consent of the Special Officers cannot be examined in these writ petitions since the writ petitioners are concerned only to the validity of the cancellation of the resolutions passed by their Gram Panchayats and the cancellation of notifications issued under sub-section 1 of Section 3 of the A.P. Panchayat Raj Act, 1994 for inclusion of their areas in VMC.

17. Learned senior counsel would contend that Gram Panchayat as an institution cannot be dissolved after the 73rd amendment of the Constitution. That the resolution passed by the Petitioners-Gram Panchayats opposing the inclusion of their areas in Visakhapatnam Municipal Corporation cannot be cancelled without assigning any special reasons. In support of his submissions, he placed reliance on the decision of our High Court in V.V.RAGHAVA REDDY VS. GOVT. OF A.P. wherein it has been held that the revisional powers of the Government under Section 264 of the A.P. Gram Panchayat Act, 1964 is only restricted to satisfy about the legality or propriety of the decision under challenge. The above observation came to be made by a learned single Judge of this Court in the cited decision while interpreting the Andhra Pradesh Gram Panchayat Declaration of Village Rules,

1994. Para 9 of the judgment needs to be noted and it is thus:

> “Rules 8 and 9 of the Rules are important Rules and are very relevant and maybe extracted. They are as follows:
>
> ‘8. Subject to the provisions contained in the Act and these rules, where a Gram Panchayat passes and unanimous resolution that a local area shall not be excluded from or included in a village, the Commissioner, if satisfied that such resolution is not vitiated by any irregularity, impropriety, or illegality shall not except for special reasons to be recorded in writing exclude from or include in that village any such area.
>
> ‘9. Where it becomes necessary to take action under sub-section (2) of Section 3 of the Act, to exclude from a village any local area or include in a village any local area or unite two or more villages or parts of village in giving effect to these rules the Commissioner shall, before issuing a notification therefore, give the Gram Panchayat which will be affected by the issue or such notification an opportunity of showing cause against the proposal to indicate its decision within a period of ten days from the date of receipt of the show cause notice and consider the objections, if any, of such Gram Panchayat.
>
> Provided that where a Special Officer has been appointed to exercise the powers and perform the functions of the Gram Panchaayats and its Sarpanch and Executive Authority, such Special Officer shall make his representation within a period of ten days from the ate of receipt of the show cause notice after taking into consideration the views expressed by the members of the Gram Sabh at a special meeting convened for the purpose,
>
> Provided, further that if no reply to the show –cause notice from the gram Panchayat or the Special Officer is received within the period aforesaid, the Commissioner shall pass such orders as deemed fit to give effect to the proposal”.
>
> ‘The declaration of village for purposes of the Act has to be done in accordance with Section 3 of the Act. Section 3(2) of the Act empowers the Commissioner to form new villages by issuance of notification in accordance with such Rules as may prescribed. Section 3 of the Act by itself gives a great deal of width to the Commissioner to divide or bifurcate local areas from any existing Gram Panchayat for constituting them into a separate Gram Panchayat. It was probably due to the undefined width of the said power that the State Government framed Rules in exercise of its power. The Rules have hedged

the unbridled powers of the Commissioner to a reasonable extent. The Rules provide safeguards, for example the Rule 9 referred above, provides that whenever the boundaries of any village are to be altered, the Commissioner shall (underlined to give emphasis) before issuing any notification in that respect give the existing Gram Panchayat an opportunity of showing cause against the proposal within certain period. The Rule requires the Commissioner to consider the objections, if any, of such Gram Panchayat. Thus the Commissioner is bound to call for the objections of the existing Gram Panchayat and is bound to consider the same before passing any orders for issuing an ultimate notification. Similarly Rule 8 mandates that when a Gram Panchayat passes a unanimous resolution that a local area shall not be excluded from the existing village, the Commissioner shall normally not exclude the said area, if the resolution is otherwise legal and proper. The Commissioner can overcome the resolution only by giving special reasons to be recorded in writing. Thus these two Rules read together have put considerable fetters on the power of the Commissioner in dividing the existing Gram Panchayat. The effect is that normally the Commissioner shall not overrule the unanimous resolution of the existing Gram Panchayat. Having regard to this legal position, it is necessary to consider the notification issued by the District Collector, exercising functions of the Commissioner, dated 19-11-1994 which has been affirmed by Government in revision in G.O.Rt. No.1504 dated 25-9-1998. The order of the Collector does not refer any where as to what was the objection raised by the Gram Panchayat, Komarolu under Rule 9. The said order only says that on 28-9-1994 the Gram Panchayat had passed a resolution and then goes on to say that there is no valid ground for rejection of the proposal. As rightly pointed out by the learned Counsel for the petitioner the resolution dated 28-4-1994 is totally irrelevant for the proceedings in question. The Commissioner had on 13-10-1994 issued notification proposing trifurcation of Komarolu Gram Panchayat and calling for objections. Any resolution prior to 13-10-1994 was in no way relevant for the purpose. The objections which were submitted by the Gram Panchayat subsequent to the show cause notice in consequence of proceeding dated 13-10-1994, have no where been referred. A single line statement appears that there is no valid ground for rejection of the proposal. It is quite obvious that the Commissioner did not abide by the mandate of either Rule 8 or Rule 9 of the Rules. There is absolutely no indication anywhere as to whether the unanimous resolution of Gram Panchayat, Komarolu dated 22-10-1994 was irregular, illegal or improper. Further, there is

absolutely nothing to show that the Collector was aware of the Rule position as incorporated in Rule 8 that special reasons have to be recorded in writing for overruling the unanimous resolution. In fact, no reason, much less special reason, has been recorded for overcoming the unanimous resolution".

18. Learned Special Government Pleader appearing for the respondents submits that inclusion of local area comprising Gram Panchayats within the adjoining Municipalities, or Corporations is permissible after canceling notification constituting the said Gram Panchayats. A further submission has been made that cancellation of notification constituting Gram Panchayats for inclusion of the area in the adjoining Municipality does not violate Article 243-E of the Constitution. It is also submitted by him that the resolutions passed by the Gram Panchayats came to be cancelled in exercise of powers under Section 246(1) of the A.P.Panchayat Raj Act, 1994 by giving cogent and convincing reasons and therefore, these writ petitions are devoid of merit and the same are liable to be dismissed. He would contend that when the Gram Panchayat as institution is abolished, the members elected to the Gram Panchayat cannot resist de-notification of the Gram Panchayat for inclusion of its areas in the Visakhapatnam Municipal Corporation. In support of his submissions, reliance has been placed on the decisions in SUNDARJAS KANYALAL BHATIJA VS. COLLECTOR THANE, MAHARASHTRA, K.NAGABHUSHANAM VS. COLLECTOR, KRISHNA DISTRICT, AND STATE OF MAHARASHTRA VS. DEEP NARAYAN CHAVAN.

19. The Government in exercise of powers conferred under Section 268 of the Andhra Pradesh Panchayat Raj Act, 1994 framed rules called Andhra Pradesh Gram Panchayat (Declaration of Villages) Rules, 1994. These Rules came to be published in G.O.Ms. No. 515, PR, RD & Relief (Pts. IV) Department, dated 17-8-1994. Rules came to be amended from time to time. Amended rules came to be published in G.O.Ms. NO. 223, PR, RD & Relief (Pts. IV) Department, dated 10-4-1995, G.O.Ms. No. 225, PR, RD & Relief (Pts.IV) Department, dated 11-4-1995, G.O.Ms.No. 232, PR, RD & Relief (Pts.IV) Department, dated 18-4-1995, G.O.Ms. No. 272, PR,RD & Relief (Pts.IV) Department, 18-5-1995 and G.O.Ms.No. 273,

PR,RD & Relief (Pts.IV) Department, dated 18-5-1995. Subsequently, the rules came to be rescinded by the Government in exercise of the powers conferred by Section 15 of the General Clause Act, 1891 (Act 1 of 1891) read with sub sections (1) and (2) of Section 3 and sub-section (1) of section 268 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994) and the same came to be published in Government Gazette vide G.O.Ms.NO.163, dated 8-3-1994.

> " In exercise of the powers conferred by Section 15 of the Andhra Pradesh General Clauses Act, 1891 (Act 1 of 1891) read with sub section (1) and (2) of Section 3 and sub-section (1) of Section 268 of the Andhra Pradesh Panchayat Raj Act, 1994 (Act 13 of 1994) the Governor of Andhra Pradesh hereby rescinds the Andhra Pradesh Gram Panchayats Declaration of Villages) Rules 1994 issued in G.O.Ms.No.515, Panchayat Raj Rural Development and Relief (Mandal-I) Department dated 17-8-1994 and published in Andhra Pradesh Gazette Part VII – Extraordinary, dated 22nd August, 1994 and the subsequent amendments issued thereon in G.O.Ms.No.223, Panchayat Raj Rural Development and Relief (Pts.IV) Department, dated 10-4-1995, G.O.Ms.No. 232, Panchayat Raj Rural Development and Relief (Pts.IV) Department dated 18-4-1995 and G.O.Ms.No. 272, Panchayat Raj Rural Development and Relief (Pts.IV) Department dated 18-5-1995 and also the executive instructions issued in G.O.Ms.No.225, Panchayat Raj Rural Development and Relief (PTs.IV) Department dated 11-4-1995, G.O.Ms.No.273 Panchayat Raj, Rural Development and Relief (Pts.IV) Department dated 18-5-1995 with immediate effect".

20. In view of the Andhra Pradesh Gram Panchayat (Declaration of Villages) Rules, 1994 being rescinded, the decision in V.V.RAGHAVA REDDY'S case on which much reliance has been placed by the learned senior counsel has no application to the facts of the case on hand. A question came up for consideration before the Supreme Court in DEEP NARAYAN CHAVAN'S case, as to whether the councilors shall vacate the office when whole of the local area comprising Municipal Areas ceases to be a Municipal Area. The Supreme Court held that the expression unless sooner dissolved under any law for the time being would bring within its sweep the provisions of Section 341 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Therefore, the moment the Corporation is constituted in accordance with law, the elected Municipal council would cease to

function and so also the Councilors, though elected will have to vacate the office. The cited decision squarely applies to the facts of the case on hand. When once the area constituting the Gram Panchayat has been de-notified, the elected Sarpanchs of the Gram Panchayat would cease to function and the Sarpanches though elected have to vacate the office. Much argument has been advanced by the learned Senior Counsel appearing for the petitioners that the objections of the petitioners/Sarpanches have not been properly considered and thus the Government Order issued de-notifying the Gram Panchayats is not legal and proper and the same is liable to be set aside. Much emphasis has also been laid on the decision in DELHI TRANSPORTATION CORPORATION'S case, wherein it has been held that *audi alteram partem* rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders, but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule. The observations made by the Supreme Court at paragraphs 260 and 264 have been emphasized and they read as under:

> "The Maneka Gandhi's case (AIR 1978 SC 597) is also an authority for the proposition that the principles of natural justice is an integral part of the guarantee of equality assured by Article 14 of the Constitution. In Union of India Vs. Tulsiram Patel, 1985 Suppl(2) SCR 131 at p. 233: (AIR 1985 SC 1416 at p.1460), this Court held that the principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject matter of that Article. Shortly put, the syllogism runs thus:
>
> Violation of a rule of natural justice results in arbitrariness which is the same as discrimination is the result of the State action, it is a violation of Art. 14, therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to the legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of 'State' in Art. 12, is charged with the duty of deciding a matter. In such a case the principles of natural justice require that it must decide such a matter fairly and impartially.

In Moti Ram Deka's case (AIR 1964 SC 600) this Court already held that 'the rule making authority contemplated by Article 309 cannot be validly exercised so as to curtail or affect the rights guaranteed to public servants under Art. 311(2). Article 311(2) is intended to afford a sense of scrutiny to public servants who are substantively appointed to a permanent post and one of the principal benefits which they are entitled to expect is the benefit of pension after rendering public service for the period prescribed by the Rules. It would, we think, not be legitimate to contend that the right to earn a pension to which a servant substantively appointed to a permanent post is entitled can be curtailed by Rules framed under Article 309 so as to make the said right either ineffective or illusory. Once the scope of Art. 311(1) and (2) is duly determined, it must be held that no rule framed under Art. 309 can trespass on the rights guaranteed by Art. 311. This position is of basic importance and must be borne in mind in dealing with the controversy in question.

Thus, it could be held that Art. 14 read with Art. 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality underArticle12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen, vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty. The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment. The exercise of discretionary power wide of mark would breed arbitrary, unreasonable or unfair actions and would not be consistent with reason and justice. The provisions of a statute, regulations or rules that empower an employer or the management to dismiss, remove or reduce the rank of an employee must be consistent with just, reasonable and fair procedure. It would, further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Art.21 of the Constitution. Any procedure prescribed to deprive such a right to livelihood or continued

> employment must be just, fair and reasonable procedure. In other words an employee in a public employment also must not be arbitrarily, unjustly and unreasonably be deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise, any law or rule in violation thereof is void.
>
> Need for harmony between social interest and individual right."

21. Under Sub-Section 2 (f) of Section 3, the Government is empowered to cancel notification issued under Sub-Section 1 of Section 3. The Government by notification can declare any village or hamlet thereto or any part of village for the purpose of the Act and specify the name of the village. The Government proposed for inclusion of surrounding Gajuwaka Municipality and 32 Gram Panchayats into the limits of the Visakhapatnam Municipal Corporation for constituting Visakapatnam Municipal Corporation as Greater Visakhapatnam Municipal Corporation and accordingly, instructed the Collector Visakhapatnam to obtain the views of the Gram Panchayats on the above proposal in the form of resolution. In all the 32 Gram Panchayts, 23 Gram Panchayats passed the resolution opposing the merger of the areas in Visakhapatnam Municipal Corporation and thereafter the Government issued show cause notices to 23 Gram Panchayats calling upon them to explain as to why the resolutions passed by them opposing the inclusion of their areas in the limit of Visakhapatnam Municipal Corporation should not be cancelled. Gram Panchayats submitted their explanations to the show cause notices opposing their inclusion of their limits into the Visakhapatnam Municipal Corporation. The Government considered the objections and cancelled the resolutions by invoking powers under Section 246(1) of the Andhra Pradesh Panchayat Raj Act, 1994 and issued G.O.Ms.No.379, dated 21-11-2005. The reasons for cancellation of the resolutions passed by the petitioners/Gram Panchayats have been detailed in G.O.Ms.No.379, dated 21.11.2005.

22. An identical question came up for consideration before the Supreme Court in SUNDARJAS KANYALAL BHATIJA V. COLLECTOR, THANE. The facts in the cited case are that on 19/06/1982, the Government of Maharashtra issued a draft

notification under See. 3(3) of the Bombay Provincial Municipal Corporation Act, 1949 (the "Act"). The draft notification proposed the formation of what is termed as "Kalyan Corporation" (the "Corporation"). It suggested the merging of Municipal areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar. Against this proposal, there were many objections and representations from persons, companies and the authorities. Amarnath and Ulhasnagar Municipal bodies and also some of the residents therein submitted their representations. They objected to the merger of their municipal areas into the Corporation. It is said that in Ulhasnagar Municipal area, Sindhies are predominant. In 1947, they were the victims of partition of the country. Being uprooted from their home land, they have since settled down at Ulhasnagar. They have formed union or federation called the All India Sindhi Panchayat Federation. It is interested in having a separate identity for Ulhasnagar. The Federation challenged the said draft notification by a writ petition before the Bombay High Court. The writ petition was not disposed of on merits. It was permitted to be withdrawn on an assurance given by the Government. The Government gave the assurance that the representatives of the Federation would be given an opportunity of being heard before taking a final decision. As per the assurance, they were given personal hearing on their representations. The others who have filed similar representations were not heard. But their objections or representations were duly considered. Thereupon, the Government decided to exclude Ulhasnagar from the proposed Corporation. Accordingly, a notification under Sec. 3(2) of the Act was issued. The Corporation was thus constituted without Ulhasnagar. That was the only alteration made in the proposal earlier notified. All other areas indicated in the draft notification were merged in the Corporation. The residents of Ambarnath Municipal areas were not satisfied. They moved the High Court under Article 226 of the Constitution challenging the notification issued under Sec. 3(2) of the Act. They interalia, contended that the action of the Government affording an opportunity of being heard only to the Federation and not to other objectors was contrary to Article 14. They asserted that the establishment of the Corporation without Ulhasnagar Municipal area, having regard to the geographical contiguity was unintelligible and incomprehensible was arbitrary and opposed to the object of the Act. They also contended that there ought to have been a fresh draft notification after taking a decision to exclude Ulhasnagar from the proposal. With similar contentions and for the same relief, there was another writ petition before the High Court. It was filed by the National Rayon Corporation Limited which is a company located within the

Municipal limits of Ambarnath. The Government contended before the High Court as well as the Supreme Court that the State had a wide discretion for selection in the areas for constitution of Corporation and the Court cannot interfere with such discretion. It was also contended that the Court had no jurisdiction to examine the validity of the reason that goes to the decision of the Government and the powers to constitute Municipal Corporation under section 6 of the Act is legislative in character and it is an extension of legislative process for which rules of natural justice have no application. The Supreme Court observed in paras 27 and 28 as follows:

"**(27)** REVERTING to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. Itcannot substitute even "its juster will for heirs".

28. EQUALLY, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the, rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to 'hear the parties who are not entitled to be heard under law."

Similar question arose for consideration before the Supreme Court in BALDEV SINGH v. STATE OF HIMACHAL PRADESH. The Supreme Court in SUNDARJAS KANYALAL BHATIJA V. COLLECTOR, THANE's case followed the proposition of law laid down in BALDEV SINGH's case. Para 31 of the judgment in SUNDARJAS KANYALAL BHATIJA V. COLLECTOR, THANE's case reads as under:

" **31.** IN Baldev Singh v. State of Himachal Pradesh, (1987) 2 SCC 510 :

(AIR 1987 SC 1239) a similar question arose for consideration. An attempt was made to constitute a notified area as provided under Section 256 of the Himachal Pradesh Municipal Act, 1968, by including portions of the four villages for such purposes. The residents of the villages who were mostly agriculturists challenged the validity of the notification before the High Court on the ground that they had no opportunity to have their say against that notification. The High Court summarily dismissed the writ petition. In the appeal before this Court, it was argued that the extension of notified area over the Gram Panchayat limits would involve civil consequences and therefore, it was necessary that persons who would be affected thereby ought to be given an opportunity of being heard. Ranganath Misra, J., did not accept that contention, but clarified :

> "WE accept the submission on behalf of the appellants that before the notified area was constituted in terms of Section 256 of the Act, the people of the locality should have been afforded an opportunity of being heard and the administrative decision by the State Government should have been taken after considering the view of the residents. Denial of such opportunity is not in consonance with the scheme of the rule of law govering our society. We must clarify that the hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way.""

23. A similar question came up for consideration in K.NAGABHUSHANAM v. COLLECTOR, KRISHNA DISTRICT as to whether the principles of self Government are violated in any manner if the Gram Panchayat is denotified and if that local area is included within the adjoining municipality. A Division Bench of this court held that the principles of self government are not violated in any manner if the Gram Panchayat is denotified and if that local area is included within the adjoining municipality. Relevant portion of Para 11 of the judgment needs to be noted and it is thus:

" 11…….The Legislature has thought fit to empower the Commissioner to cancel a notification issued by him under S.3(1) in the several circumstances enumerated in R.12 of the Declaration of Village Rules. When a Gram Panchayat is sought to be included within an adjoining municipality, it is equally competent for the Collector to cancel the notification of the Gram Panchayat. The Municipality exercising its control over the local area or the Gram Panchayat exercising its control over that area re alike different units of self-Government. The principles of self-government are not violated in any manner if the Gram Panchayat is denotified and if that local area is included within the adjoining municipality. The denotification does

not violate in any manner Art.40 of the Constitution. The obligation of the State to organize village panchayats and to endow them with such power or authority as may be necessary to enable them to function as units of self-Government is there only when the local area continues to be a village. When the notification constituting the Gram Panchayat itself is cancelled for valid purposes so as to include it within an adjoining municipality, Art.40 does not come in the way of the Government in including the local area within the limits of the adjoining municipality."

24. Article 243(d) defines Panchayat which read as follows:

"*Panchayat means an instrument (by whatever name called) of self Government constituted under Article 243(b) for the Rural areas".*

Under Article 243-B they shall be constituted in every State Panchayats at the village, intermediate and district level in accordance with the provisions of Part IX.

25. Learned Senior Counsel appearing for the petitioners by referring the definition of "Panchayat" contends that the "Panchayat" as an institution cannot be abolished. I do not see any substance in this contention for the reason that Panchayats and villages go together and once village is de-notified Panchayat ceases to be an institution. Most of the objections of the petitioners-Gram Panchayats for inclusion of their areas in VMC are mere apprehensions and they have no basis. Since merger of the areas of Gram Panchayats into VMC is in the larger interest of the public, the Government felt that the objections raised by the Gram Panchayats do not have force. It is an undisputed fact that the above Gram Panchayats are contiguous areas of Visakhapatnam Municipal Corporation. Therefore, I do not find any flaw in the de-notification of the petitioners/Gram Panchayats and inclusion of their areas in Visakhapatnam Municipal Corporation for formation of Greater Visakhapatnam Municipal Corporation.

26. For the foregoing reasons, I find that the writ petitions are devoid of merits and accordingly, they are hereby dismissed. No order as to costs.

(B.Seshasayana Reddy, J) 16th February, 2006

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Bo/tnb

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

W.P.Nos.25147, 25771 and 25772 OF 2005

16th **February, 2006**